

<p>SUPREME COURT OF COLORADO  2 East 14<sup>th</sup> Avenue  Denver, Colorado 80203</p>	
<p>Original Proceeding  Pursuant to Colo. Rev. Stat. §1-40-107(2)  Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and  Submission Clause for Proposed Initiative 2013-  2014 #38 (“Right to Purchase and Possess  Ammunition Storage and Feeding Devices”)</p> <p><b>Petitioners: GEORGE KENNEDY and  DONALD MACALDY</b></p> <p>v.  <b>Respondents: TIM LeVIER and JT DAVIS</b></p> <p><b>and</b></p> <p><b>Title Board: SUZANNE STAIERT; DAVID  BLAKE; and JASON GELENDER</b></p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p>Attorneys for Petitioners:  Mark G. Grueskin, #14621  Heizer Paul Grueskin LLP  2401 15<sup>th</sup> Street, Suite 300  Denver, CO 80202  Telephone: 303-376-3703 (direct)  Telephone: 303-595-4747  Facsimile: 303-595-4750  Email: mgrueskin@hpgfirm.com</p>	<p>Case No. 2013 SA 111</p>
<p><b>PETITIONERS’ OPENING BRIEF AND ANSWER BRIEF TO  PROPONENTS’ OPENING BRIEF</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the brief complies with C.A.R. 28(g). It contains 3,722 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

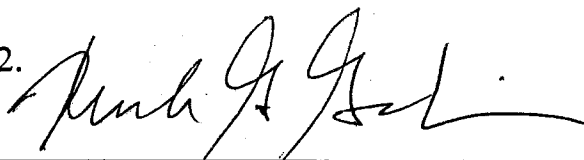
For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. \_\_, p. \_\_), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

  
\_\_\_\_\_  
Mark G. Grueskin

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## **STATEMENT OF ISSUES PRESENTED**

Whether the Title Board erred in failing to inform voters that Initiative #38 expressly deals with “gun magazines.”

Whether the Title Board erred in failing to inform voters about Initiative #38’s newly granted “right” to purchase and possess gun magazines.

Whether the Title Board erred in failing to inform voters that this new “right” will be placed in the state Bill of Rights.

## **SUMMARY OF THE ARGUMENT**

This proposed measure deals with ammunition used in guns. Specifically, it prohibits the legislature from enacting a limit – any limit – on “gun magazines.” Gun magazines are “storage and feeding devices” used for purposes of providing multiple rounds of ammunition to be used in a firearm.

Despite this clarity in the measure itself, the ballot title set by the Title Board does not mention “guns.” Or “gun magazines.” Or firearms. Or anything having to do with the very device or ammunition delivery system in question. In a state where not one but two of the worst mass shootings in recent American history occurred, it is inconceivable that a restriction on legislative power to deal with guns should be silent on the weaponry affected. That silence is misleading. And

for that reason, the ballot title is defective and should be returned to the Title Board for correction.

The ballot title also omits any reference to a “right” to be conferred by the state’s Bill of Rights. The Title Board is not typically so cavalier when proposed measures add rights that are placed at the core of our system of laws. In fact, in numerous instances, the Board has set titles that specifically inform voters that those measures sought to provide or expand our “rights.” The Board failed to adhere to its own precedent here, and that failure was error.

At a minimum, the Title Board should have stated that this amendment is being placed in our Bill of Rights. Given that the Bill of Rights does not typically create rights that can be compromised by a vote of the people, this failure is misleading and provides cause for returning the ballot title to the Title Board for correction to the ballot title.

## **STATEMENT OF THE CASE**

### **I. Nature of the Case, Course of Proceedings, and Disposition Below**

#### **A. Statement of the facts**

Tim LeVier and JT Davis (hereafter “Proponents”) proposed Initiative 2013-2014 #38 (“#38”). Earlier, the Proponents filed Initiative 2013-2014 #8. After their review and comment hearing before representatives of those offices, they

submitted a second measure, Initiative 2013-2014 #38. They did not submit Initiative #8 to the Title Board for title setting, and that measure is not at issue in this appeal.

In connection with Initiative #38, the legislative staff gave the Proponents a letter, stating that no substantial change had been made outside of the review and comment hearing on Initiative #8. Thus, a review and comment hearing on #38 was waived, and Proponents submitted a final draft of their measure to the Secretary of State so that the Title Board could set a ballot title.

The entire “final text” of Initiative #38 as submitted to the Title Board reads:

Proposed Constitutional Amendment for the State of Colorado  
To Establish a Right of the People to Purchase and Possess  
High Capacity Ammunition Storage and Feeding Devices  
To be Numbered as Article II, Section 32

Be it Enacted by the People of the State of Colorado:

In the constitution of the state of Colorado, article II, **add**  
section 32 as follows:

**SECTION 32. GUN MAGAZINES – NO LIMITATION OR  
RESTRICTION.**

NO LAW, EXCEPT A LAW ENACTED BY A VOTE OF THE PEOPLE,  
SHALL RESTRICT OR LIMIT THE RIGHT OF THE PEOPLE TO PURCHASE  
OR POSSESS AMMUNITION STORAGE AND FEEDING DEVICES OF ANY  
CAPACITY.

See **Exhibit A** (attached) (bold in original).



A Title Board hearing was held on April 18, 2013 both to evaluate whether the initiative contained a single subject and, to the extent it did, to set a title. The Board found that the measure reflected a single subject and set a title at that meeting. That title was worded as follows:

An amendment to the Colorado constitution prohibiting any capacity-based restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction imposed by a voter-approved law.

*See Exhibit B* (attached).

**B. Nature of the proceedings below**

On April 24, 2013, Petitioners filed a Motion for Rehearing and alleged jurisdictional violations and also alleged that the title was unfair and misleading. *See C.R.S. § 1-40-107(1)*. The rehearing was held on April 26, 2013, at which time the Title Board granted in part and denied in part the motion for rehearing. In response to the Motion for Rehearing, the Board struck from the title set forth above the phrase “capacity-based” as it modified “restriction on the purchase or possession of ammunition storage and feeding devices” and replaced the word “imposed” with “enacted.” The revised title reads as follows:

An amendment to the Colorado constitution prohibiting any restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction enacted by a voter-approved law.

See **Exhibit C** (attached). Because the title continues to be misleading notwithstanding these changes, Petitioners filed a petition for review before this Court as authorized by C.R.S. § 1-40-107(2). This Court set an expedited briefing schedule with each party directed to submit opening briefs by May 15 and answer briefs fourteen days after the opposing opening brief was served.

The Respondents served their Opening Brief on the undersigned on May 6, and under the Court's briefing schedule, Petitioners' Answer Brief is due fourteen days after service of that brief. As a matter of economy, this brief comprises both Petitioners' Opening Brief and their Answer Brief to Respondents' Opening Brief.

**II. The ballot title is misleading to voters.**

**A. Standard of Review and Pertinent Record Citations.; Rule 28(k).**

The Title Board is charged with setting a title that fully, fairly, and accurately informs voters of the central elements of the measure. C.R.S. § 1-40-106(3)(b). The Board need not summarize every single provision in the proposed initiative, nor need it project the measure's effects. This Court will review the Title Board's decision *de novo* to determine whether it has satisfied the requirement for a balanced and informative title. In doing so, the Court grants significant deference to the Board's determination. *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #256*, 12 P.3d 246, 255

(Colo. 2000). However, this Court will reverse the Board's decision if the title set is clearly misleading. *Id.*

The objective of a ballot title is to provide voters with enough information about the measure's central elements to make a thoughtful decision about its merits. The ballot question itself is central to the election process; voters review it during two junctures in the election process – while petitions are being circulated, as the ballot title is presented on every page of the petition, and when they see their ballots. Not surprisingly, then, avoiding voter confusion is at the heart of the title setting process. “[T]he title board shall consider the public confusion that might be caused by misleading titles” and set a title “which shall correctly and fairly express the true intent and meaning” of the proposed measure. C.R.S. § 1-40-106(3)(b).

Petitioners do not object to the statement of the Standard of Review as set forth in the Proponents' Opening Brief.

The Petitioners' objections were raised in the Motion for Rehearing and at the rehearing itself. Motion for Rehearing at 1 (¶¶II.B.2, 7-8).

**B. The ballot title set for Initiative #38 is misleading by omitting any reference to “gun magazines” or even “guns” in the title.**

The title set does not inform voters that the new restriction on the law-making powers of the General Assembly relates to ammunition for a specific type of weapon, and this failure was error.

The measure states, “No law, except a law enacted by a vote of the people, shall restrict or limit the right of the people to purchase or possess ammunition storage and feeding devices of any capacity.” The restriction would appear to be unlimited regarding the weapons covered. This is not the case, and it was not the stated intent of the Proponents. The heading of the Proponents’ Section 32 of Article II specifically states that the measure concerns “gun magazines,” as it reads, “Gun magazines – no limitations or restrictions.” As such, a direct reference to “guns” or “gun magazines” should have been set forth in the ballot title.

This Court consistently requires that a ballot title reflect limiting language in a proposed initiative. In an education funding initiative, for instance, the proponents included two explicit conditions on funding: the state could only fund the education of students who were “required by law” to be educated in the public schools; and such funding could only be directed to schools that were “not pervasively sectarian.” *In re Proposed Initiated Constitutional Amendment of Education*, 682 P.2d 480, 482 (Colo. 1984). However, neither of these conditions was addressed in the ballot title, an oversight this Court deemed to be error. “In the absence of these brief but critical phrases, the (titles) do not fairly reflect the contents of the proposed amendment.” *Id.* (citation omitted). The Court mandated the addition of these limiting phrases in order to “cure such defect.” *Id.*

More recently, this Court analyzed an initiative's heading, as provided by the measure's drafters, to determine if the Title Board complied with the legal requirements for a ballot title. The initiative stated, "The right of individuals to vote is fundamental." However, the heading of the section being added to the Constitution read, "**Elections for employee representation**," as did other language in the initiative. *In re Title, Ballot Title, & Submission Clause for Initiative 2009-2010 #24*, 218 P.3d 350, 353 (Colo. 2009) (bold in original). Petitioners argued that the measure's breadth was established by the statement about an unqualified, fundamental right to vote, rather than the references relating solely to those elections that deal with employee representation.

The Court rejected that argument and did so in light of the specific limiting language in the initiative, including the restrictive wording of the measure's heading. The heading "frames... (and) contextualizes the text of the Initiatives." *Id.* The heading is a strong indicator of the proponents' intent, and using it to establish the adequacy of the ballot title is consistent "with our analogous precedent regarding the use of statute headings in statutory construction." *Id.* at 353-54, citing *In re Petition of U.M. and S.M.*, 631 P.2d 165, 167 (Colo. 1981) and *Martinez v. Cont'l Enter.*, 730 P.2d 308, 313 (Colo. 1986). The heading is thus a material part of a statute – or a constitutional provision – as it indicates its framers'

intent. *Fabec v. Beck*, 922 P.2d 330, 337 (Colo. 1996) (initiative statute properly applied in light of the express wording of its statutory heading). As a result, the Court held that the Title Board correctly structured the title only in light of its limiting language in the heading and text – “elections for employee representation.” #24, *supra*, 218 P.3d. at 354.

Here, the inclusion of a reference to guns or gun magazines would “fairly express the true intent and meaning of the amendment.” C.R.S. § 1-40-106(3)(b). The Title Board members understood this because they suggested, of their own accord, including “firearm,” “gun,” or “gun magazine” in the ballot title. April 18, 2013 Title Board Transcript (“Tr.”), at 4:5-13 (using “firearm” to modify “ammunition” would make the title “more clear”); 6:19-23 (title would be accurate if it was “more blunt and just sa(id) gun instead of firearm”); (8:5-7) (use of “gun magazine” would help address “confusion” among voters) (attached as **Exhibit D**). The Proponents said they were comfortable with a change that would have included reference to “firearm.” Tr., at 4:19-24. They had taken pains to make gun magazines the specific focus of their stated single subject, suggesting that their measure “gives a state constitutional right to purchase and possess **gun magazines** of any capacity.” *Id.* at 2:15-17 (emphasis added). The Board, however, decided

to omit any language to reflect the Proponents' stated intent that this measure apply to gun magazines.

The fundamental meaning of "gun" is well-known and easily discernible. *See In re Wilkinson*, 402 B.R. 756, 763-64 (W.D. Tex. 2009) (using dictionary definitions, court resolved that a "gun" means a portable firearm rather than a household furnishing). This Court does not need to further interpret that term now. *In re Title, Ballot Title and Submission Clause for 2009-2010 # 45*, 234 P.3d 642, 645 (Colo. 2010). In any event, using this word would not confuse voters if they read it in a ballot title. Thus, the Title Board should have used "gun" or "gun magazine" in the title to accurately communicate the thrust of this measure.

Because the title does not do so, though, voters cannot know which ammunition storage and feeding devices are intended to be addressed by this measure. For example, repeating crossbows have been in existence over two thousand years. In ancient China, these weapons had magazines of ten (10) bolts that could be fired within fifteen (15) seconds. *See Exhibit E* (attached). Today, a person can simply order a back issue of *Popular Mechanics* to get the plans for building a repeating crossbow in a home workshop. *See Exhibit F* (attached) (device "will deliver five shots in five seconds with near-rifle accuracy" by means of arrows "loaded from the top into a magazine"). Or one can simply go on-line

for step-by-step instructions. See **Exhibit G** (attached). Because #38's ballot title does not refer to "gun magazines," voters could easily assume that crossbow magazines and other ammunition storage and feeding systems are subject to the same level of the newly granted constitutional protection (or restriction on legislative authority, depending on how one reads the measure) as gun magazines, even though that is not the case.

At best, voters will be uncertain about the reach of this initiative. At worst, they will read the language of the title literally and believe that it applies to weapons outside of its express scope. Thus, the Board's failure to refer to "gun magazines" will confuse or mislead voters about which ammunition storage and feeding devices are affected by this initiative. See *In re Title, Ballot Title & Submission Clause for Election Reform Amendment*, 852 P.2d 28, 32 (Colo. 1993) ("if a choice must be made between brevity and a fair description of essential features of a proposal, the decision must be made in favor of full disclosure to the registered electors"); cf. *In re Title, Ballot Title & Submission Clause for Initiative 1999-2000 #25*, 4 P.3d 485, 501 (Colo. 2000) (for initiative requiring background checks at gun shows, ballot title was sufficient by its reference to "firearm" because that term was defined and understandable).



In their Opening Brief, the Proponents do not dispute that their use of “gun magazines” in the heading narrows their measure. They simply state, “The term ‘ammunition storage and feeding devices’ is all-encompassing and reasonably relates to firearms.” Opening Brief of Respondents at 5. Their statement makes the Petitioners’ point. That phrase is “all-encompassing.” It may “relate to” firearms, but it does not communicate to voters that it “means” or is limited to firearms or deals with gun magazines. The title simply lacks the clarity to communicate to voters what the measure actually addresses, and thus, the title is misleading.

In light of this Court's precedent about the use of headings in crafting ballot titles, as well as #38’s specific language and the unmistakable intent of these Proponents, the Title Board erred by refusing to use the term “gun” or the phrase “gun magazines” in the ballot title.

**C. The ballot title set for Initiative #38 is misleading by omitting any reference to its creation of a “right” within the Bill of Rights.**

Typically, where an initiative seeks to amend the Bill of Rights by creating a new right, that fact is not hidden from voters. Here, however, it was undisclosed, and that failure on the part of the Board was error.

1. #38 purports to create a "right" to possess and purchase ammunition storage and feeding devices.

The measure creates Section 32 within Article II of the Constitution, the state's Bill of Rights. The Proponents were clear that, by creating section 32, they felt they were adding to the fundamental rights guaranteed by the Constitution.

They addressed this issue before the Board, Tr. at 2:15-17, and in the "final text" document they submitted to the Secretary of State:

Proposed Constitutional Amendment for the State of Colorado  
**To Establish a Right of the People** to Purchase and Possess  
High Capacity Ammunition Storage and Feeding Devices  
To be Numbered as Article II, Section 32

See **Exhibit A** (emphasis added). While one Title Board member did not agree with this characterization of the measure, Tr., 7:16-20, the intent of a measure's proponents is what is relevant here. Determining their intent is critical, and this Court may look to non-textual sources to identify it. *In the Matter of Title and Ballot Title and Submission Clause for Initiative 2005-2006 #55*, 138 P.3d 273, 281 (Colo. 2006) (campaign website revealed proponents' actual intent in the measure before the Title Board). If the Court can consider a campaign website, it can certainly look to the direct, written expression of Proponents on the piece of paper they have deemed to be their final initiative draft.

Other initiatives that have added rights to Article II have included the fact that they are adding rights to the Constitution in their ballot titles. For instance, in *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127 (Colo. 1996), the proposed measure added certain language to Article II, section 3 of the Constitution dealing with inalienable rights. This proposed measure gave parents control of the values, education, upbringing, and discipline of their children. The title read “An amendment to the Colorado Constitution concerning parental **rights**.” *Id.* at 1132-33 (emphasis added). The title further stated that “parents have the **right** to direct” the afore-mentioned aspects of their childrens' lives. *Id.* at 1133 (emphasis added). The title was upheld by this Court. *Id.* at 1131-32.

A specific reference in a ballot title to additional “rights” created by an initiative is the norm for proposed measures adding to our Bill of Rights. *See, e.g., # 45, supra*, 234 P.3d at 645 (Court upheld ballot title addressing “right” of health care choice); *In re Proposed Initiative “Concerning the Fair Treatment of Injured Workers”*, 873 P.2d 718, 723 (Colo.1994) (Court upheld ballot title addressing “right” of workers to prompt medical treatment). That norm should not have been ignored by the Title Board in this instance.

In their Opening Brief, the Proponents state that “the measure simply refers to and memorializes an existing right guaranteed under the 2<sup>nd</sup> Amendment of the

United States Constitution.” Opening Brief of Respondents at 5. The Second Amendment to the U.S. Constitution reads a little differently. “A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.” Obviously, Initiative #38 does not simply mimic the Second Amendment.

However, the Proponents’ admission makes it clear that they did not really intend to cover toys like Nerf guns because such a reading requires a reasonable person to “misinterpret their (the legislature’s) intent” in enacting certain legislation at the 2013 session. Tr., 5:15-20. Voters should know from the ballot title how those specifically stated changes, which purport to create a “right” to certain ammunition delivery systems, are crafted.

2. *#38’s restrictions on legislation dealing with certain ammunition devices are placed in the Bill of Rights.*

For different reasons, the ballot title should have referred to the measure’s placement in the Bill of Rights. Initiative #38 provides for voter approval of certain laws that would interfere with this “right” of any citizen to possess and purchase certain types of ammunition delivery systems.

Even voter approved ballot measures cannot deny citizens their fundamental, and thus guaranteed, rights. *Lucas v. Forty-Fourth Gen. Assembly of Colo.*, 377 U.S. 713, 736 (1964); *Evans v. Romer*, 854 P.2d 1270, 1286 (Colo. 1993). In fact,

the essential nature of the state's Bill of Rights is to place certain fundamental rights outside of the political process.

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.... (These rights) depend on the outcome of no elections.

*Vogts v. Guerrette*, 351 P.2d 851, 865 (Colo. 1960) (citations omitted) (Frantz, J., dissenting). Before they sign these petitions or cast their ballots, voters should know that Initiative #38 creates a qualified right in the Bill of Rights. By the amendment's terms, this right can be restricted – not just by the courts – but by the simple operation of the political process at any election at which ballot issues are considered.

In their Opening Brief, the Proponents state that it is their intent “to allow restrictions to ammunition storage and feeding devices so long as voters approve those restrictions.” Opening Brief of Respondents at 5. Thus, Proponents agree that at least this portion of the Bill of Rights will now be negotiable at the ballot box. To achieve this end, the Title Board must accurately portray this aspect of the measure by referring to the Bill of Rights in the title. The original staff draft of a ballot title referred to Article II of the Constitution. Tr. , at 3:16-18.

The Title Board erred by omitting any reference to the salient feature of this amendment's placement in the Bill of Rights, and the title should be returned to the Board for correction on that score as well.

### CONCLUSION

The Title Board erred by failing to inform voters that this measure deals with "gun magazines" and that it creates a right, placed in the Bill of Rights. These failures are not inconsequential errors in light of this Court's precedent. And they are certainly not inconsequential in light of Colorado's recent history with gun violence. The titles should be returned to the Board for correction.

Respectfully submitted this 15th day of May, 2013.



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**ATTORNEYS FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of May, 2013, a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF AND ANSWER BRIEF TO PROPONENTS' OPENING BRIEF** was served via overnight delivery (Federal Express), to the following:

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\_\_\_\_\_

Final text

(#38)

Proposed Constitutional Amendment for the State of Colorado  
To Establish a Right of the People to Purchase and Possess  
High Capacity Ammunition Storage and Feeding Devices  
To be Numbered as Article II, Section 32

**RECEIVED**

APR 04 2013

ELECTIONS/LICENSING  
SECRETARY OF STATE

S. WARD

Be It Enacted by the People of the State of Colorado:

In the constitution of the state of Colorado, article II, add section 32 as follows:

**SECTION 32. GUN MAGAZINES -- NO LIMITATION OR RESTRICTION.**

**NO LAW, EXCEPT A LAW ENACTED BY A VOTE OF THE PEOPLE, SHALL RESTRICT OR LIMIT THE RIGHT OF THE PEOPLE TO PURCHASE OR POSSESS AMMUNITION STORAGE AND FEEDING DEVICES OF ANY CAPACITY.**

**EXHIBIT A**



**Ballot Title Setting Board**

**Proposed Initiative 2013-2014 #38<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution prohibiting any capacity-based restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction imposed by a voter-approved law.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution prohibiting any capacity-based restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction imposed by a voter-approved law?

*Hearing April 18, 2013:  
Single subject approved; staff draft amended, titles set.  
Hearing adjourned 10:31 a.m.*

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<sup>1</sup> Unofficially captioned "Right to Purchase and Possess Ammunition Storage and Feeding Devices" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

**Ballot Title Setting Board**

**Proposed Initiative 2013-2014 #38<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution prohibiting any restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction enacted by a voter-approved law.

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Shall there be an amendment to the Colorado constitution prohibiting any restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction enacted by a voter-approved law?

*Hearing April 18, 2013:  
Single subject approved; staff draft amended, titles set.  
Hearing adjourned 10:31 a.m.*

*Rehearing April 26, 2013:  
Motion for Rehearing denied except to the extent that the Board made changes to the title.  
Hearing adjourned 11:39 a.m.*

---

<sup>1</sup> Unofficially captioned "Right to Purchase and Possess Ammunition Storage and Feeding Devices" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

INITIATIVE TITLE SETTING REVIEW BOARD  
PROPOSED INITIATIVE MEASURE 2013-2014 #38  
RIGHT TO PURCHASE AND POSSESS  
AMMUNITION STORAGE AND FEEDING DEVICES  
APRIL 18, 2013

---

The following proceedings were held on  
April 18, 2013, 10:20 a.m.

---

THE BOARD:

SUZANNE STAIERT

DAVID BLAKE

JASON GELENDER

TIM LEVIER and J.T. DAVIS, For the Proponents

## P R O C E E D I N G S

1  
2 MS. STAIERT: All right. Good morning. This is  
3 a continued meeting of the Colorado State Title Board. We  
4 had one measure that was continued over from yesterday.  
5 The time is now 10:20, and we are going to call up  
6 Proposed Initiative 2013-2014 #38. And if the proponents  
7 could come up to the podium and just introduce yourselves,  
8 and if you could give us a short synopsis of the intent of  
9 your initiative.

10 MR. LEVIER: Sure. Hi. My name is Tim LeVier.  
11 I'm one of the proponents. Sitting next to me here is  
12 J.T. Davis. We are both the proponents that have crafted  
13 and put forward this measure. We have signed our  
14 affidavits. We have turned those in.

15 We've created a bill that's one sentence only  
16 that gives a state constitutional right to purchase and  
17 possess gun magazines of any capacity. We've gone to  
18 Legislative Services, not once, but twice, now in the  
19 second round after we made our changes based on the  
20 comments they provided us. They gave us a waiver letter  
21 to submit to the Secretary of State's office.

22 MS. STAIERT: All right. The first issue we need  
23 to take up is single subject. Is there -- I don't see  
24 anyone on the sign-up sheet, but is there anybody who  
25 wishes to speak on the issue single subject?

1 All right. Comments from the board.

2 MR. BLAKE: None.

3 MS. STAIERT: Motions?

4 MR. GELENDER: Yeah. I would move that we find a  
5 single subject for Proposed Initiative 2013-14 number --  
6 what number -- 38.

7 MR. BLAKE: Second.

8 MS. STAIERT: All those in favor?

9 THE BOARD: Aye.

10 MS. STAIERT: So we will now proceed to setting a  
11 title. Have you seen the staff draft of the proposed  
12 title?

13 MR. LEVIER: I have.

14 MS. STAIERT: Okay. And do you have any comments  
15 on the draft?

16 MR. LEVIER: Only one. It says shall there be an  
17 article added to article II. We were wondering if that  
18 was supposed to be a section added to article II.

19 MS. STAIERT: We'll get to that, 'cause I don't  
20 even know if we'll specify where it's going to --

21 MR. LEVIER: Otherwise, we felt that was very  
22 clear for the intent and what we're attempting to get at.

23 MS. STAIERT: All right. Okay. Comments from  
24 the Board? Boy, we should have done this one yesterday it  
25 would have seemed like.

1 MR. BLAKE: Yeah.

2 MR. GELENDER: Do you want to start or --

3 MR. BLAKE: Sure. I think the proponent may be  
4 correct as far as accuracy is concerned.

5 My only question or proposal was to insert  
6 firearm, or is it -- again, there are plenty of people,  
7 and I'm sure the proponents are familiar with firearms,  
8 but there are a lot of people that aren't. And in order  
9 to achieve clarity, I thought the insertion of firearm  
10 before ammunition might assist that. However, the  
11 lang- -- the actual proposal doesn't say that, and I don't  
12 think it's necessarily ambiguous, I just think it would be  
13 more clear.

14 MS. STAIERT: Okay.

15 MR. BLAKE: And I bl- -- I guess I should ask the  
16 proponents whether or not that's the intent, is firearm  
17 ammunition storage and feeding devices as opposed to some  
18 other --

19 MR. LEVIER: Well, we're fine if we want to make  
20 that change and clarify firearm, as long as that's  
21 consistent with House Bill 1224 where they -- as long as  
22 that was specified in House Bill 1224 where they  
23 specifically addressed firearms for their ammunition  
24 capacity limits.

25 MR. BLAKE: Do you want to answer that question?

1 MS. STAIERT: Well, and the fact is that what we  
2 put in the question, what's going to dictate whether or  
3 not this will supersede that is going to be the text of  
4 what you submitted, not the question.

5 MR. LEVIER: Hm-hmm.

6 MS. STAIERT: So you know, if we're really  
7 talking about firearm ammunition, the purpose of the title  
8 is just to advise the voters, you know, of what the intent  
9 is, and it's not -- it doesn't have any effect on the  
10 actual application except to the extent that we're talking  
11 about your intent today. But I think your intent is  
12 probably related to what the legislature passed, and, you  
13 know, providing that on the record is, you know -- gets  
14 you there.

15 MR. LEVIER: One of my concerns is that I don't  
16 recall there being a firearm limitation in House Bill  
17 1224. Therefore, they act- -- if you misinterpreted their  
18 intent with that bill, you would say that Nerf rounds and  
19 capacity -- magazines for Nerf guns are included or could  
20 be subject to that law.

21 MS. STAIERT: Okay.

22 MR. LEVIER: So our intent is to make sure that  
23 even non-firearms things are exempt from this.

24 MS. STAIERT: Well, I guess with that, that --  
25 that change what you want to do?

1 MR. BLAKE: I don't think so.

2 MS. STAIERT: Okay.

3 MR. BLAKE: You know, I think it's -- I mean I  
4 don't want to get into the sum or substance of the  
5 proposal and how it will be interpreted or argued, and  
6 that's, I think, what the proponents were getting into.

7 MS. STAIERT: Yeah.

8 MR. BLAKE: I don't think that's my place sitting  
9 here.

10 MS. STAIERT: Do you want to move the change?  
11 Oh, you're looking at it.

12 MR. BLAKE: Yeah.

13 MS. STAIERT: Do you have anything?

14 MR. GELENDER: Well, I think that the title  
15 actually doesn't really accurately reflect anything. One,  
16 it doesn't reflect the ability of the people by voter-  
17 approved law to allow the restrictions, which I think we  
18 need to reflect in the title.

19 As for this, I'm wondering, looking at the header  
20 for the new Section 32 in the initiative, it says gun  
21 magazines. So I might suggest if we added anything, and I  
22 don't know that we need to, I might say even more blunt  
23 and just say gun instead of firearm.

24 MS. STAIERT: Okay.

25 MR. BLAKE: I only say that because I'm pretty



1 sure firearm is the term of art, at least in, for example,  
2 the federal issues under the FFLs.

3 MR. GELENDER: Okay. Fair enough.

4 MR. BLAKE: In other words, a federal firearm  
5 licensee. It's not a federal gun licensee. Firearm to me  
6 was a legal term of art.

7 MR. GELENDER: Okay. And I don't work in this  
8 area at all, so I'm fine deferring to that.

9 MR. LEVIER: With respect to the board, actually,  
10 Mr. Blake is correct. Firearm is the correct term. Gun  
11 actually historically refers to artillery. So by  
12 definition citizens don't possess guns, they possess  
13 firearms.

14 MS. STAIERT: Okay. Do you have suggested  
15 language to start the --

16 MR. GELENDER: I do. I mean I think what this is  
17 really doing, even though it's -- by all means feel free  
18 to jump in if you disagree -- is not so much creating a  
19 right as sort of acknowledging that there is one already  
20 and limiting the extent to which it can be restricted.

21 So I would say something like -- you know, we can  
22 do the concerning thing if you think we need it. On one  
23 this short, I'm not sure we do. An amendment to the  
24 Colorado Constitution prohibiting any capacity-based  
25 restriction on the purchase or possession of ammunition

1 storage and feeding devices other than a restriction  
2 imposed by a voter-approved law.

3 MR. BLAKE: I want to see that typed up, and I'm  
4 going to withdraw my recommendation based on two things.  
5 One, in the actual language Section 32 it says gun  
6 magazines. So I don't want to create the exact confusion  
7 that we just had the exchange about.

8 But I guess it's also really not restricted to --  
9 well, I'll touch on your comment about Nerf. I don't  
10 think that's either your intent or a reasonable  
11 interpretation. But I do think you could still be in  
12 violation of 1224 if you possessed something that was --  
13 ran afoul of it because it could possess 16, you know,  
14 rounds of ammunition even if you didn't have a firearm.  
15 Okay.

16 MS. STAIERT: Right.

17 MR. BLAKE: So tying it to a firearm may be too  
18 limiting. Again, I think even that might be a stretch,  
19 but maybe I shouldn't be proposing a limitation on it,  
20 notwithstanding the Nerf example.

21 So I'll withdraw my comment about firearm or gun,  
22 and I'd like to see your proposed rewrite up on the  
23 screen.

24 I will be curious what the proponents think.

25 MR. LEVIER: We think that accurately reflects

1 what we've written.

2 MS. STAIERT: I like it.

3 MR. GELENDER: I like it.

4 MR. BLAKE: I'm not -- I mean I have the same  
5 concerns you did with the first one, but this one  
6 definitely does the same thing.

7 MR. GELENDER: Okay.

8 MR. BLAKE: That's preferable. I would certainly  
9 support it.

10 MR. GELENDER: Then I guess I will -- I'll just  
11 move that we adopt the title as amended, staff draft as  
12 amended as the title for Proposed Initiative 2013-14 #38.

13 MR. BLAKE: Second.

14 MS. STAIERT: All right. All those in favor.

15 THE BOARD: Aye.

16 MS. STAIERT: All right. The title is adopted  
17 and changes to the submission clause will be reflected.

18 That concludes our meeting of the title board and  
19 the time is now 10:30. Thank you.

20 MR. LEVIER: Thank you.

21 MR. BLAKE: Thank you.

22 (The hearing was concluded at approximately  
23 10:30 a.m., April 18, 2013.)

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C E R T I F I C A T E

I, Deborah D. Mead, Certified Shorthand Reporter and Notary Public, do hereby certify that the said proceedings were transcribed by me from an archived recording on the Secretary of State's website; that the same is a full, true, and correct transcript of my shorthand notes taken.

I further certify that I am not attorney, nor counsel, nor in any way connected with any attorney or counsel for any of the parties of said hearing, no otherwise interested in the outcome of this hearing.

IN WITNESS WHEREOF, I have affixed my signature and seal this 13th day of May 2013.

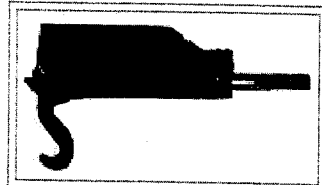
My commission expires June 18, 2017.

\_\_\_\_\_  
Deborah D. Mead  
Certified Shorthand Reporter

# Repeating crossbow

From Wikipedia, the free encyclopedia

A **repeating crossbow** is a crossbow where the separate actions of stringing the bow, placing the bolt and shooting it can be accomplished with a simple one-handed movement while keeping the crossbow stationary. This allows a higher rate of fire than a normal crossbow: there is a magazine containing a number of bolts on top of the bow, and the mechanism is worked by moving a rectangular lever forward and backward. The first example appear for the first time in Greece in the 3rd cent. BC, described by Philon of Byzantium.<sup>[1]</sup>



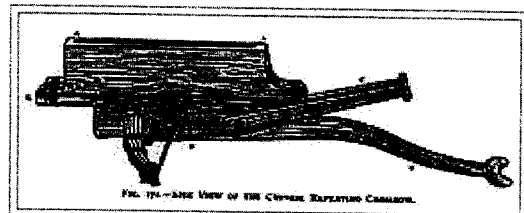
A repeating crossbow excavated from a Chu Tomb

## Contents

- 1 History
- 2 Bow String
- 3 Power
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- 5 References
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## History

The Chinese repeating crossbow (Chinese: 諸葛弩; pinyin: *zhūgě nǔ*; Wade–Giles: chu-ke nu; literally "Zhuge crossbow"; sometimes romanized as "chu-ko-nu") is a device with a simple design. The bow string consisted of animal sinew twisted into a cord of suitable strength. Also known as the *lián nǔ* (simplified Chinese: 连弩; traditional Chinese: 連弩; literally "continuous crossbow"), the invention is commonly attributed to the strategist Zhuge Liang (181–234 AD) of the Three Kingdoms period, but those found in Tomb 47 at Qinjiazui, Hubei Province have been dated to the 4th century BC.<sup>[2]</sup> Zhuge Liang improved the design of the repeating crossbow, and made a version which shot two to three bolts at once and was used in massed formations. For this reason, it was named after him.<sup>[citation needed]</sup> Other repeating crossbows fired as many as 10 bolts before exhausting the magazine.<sup>[3]</sup> The bolts of one magazine are fired and reloaded by simply pushing and pulling the lever back and forth.<sup>[4]</sup> Such action could fire 10 bolts in 15 seconds, after which the magazine would be reloaded.<sup>[5]</sup> The weapon used by the ancient militaries was developed into a composite-recurve variety for more power. The recurved repeating crossbow is generally still weaker than the regular recurved crossbow, and was mainly used for sieges or behind shield cover. The Chinese repeating crossbow had a maximum range of 120 meters, with an effective range of 60 meters, far less than that of a non-repeating crossbow. Non-recurved versions of



Chinese repeating crossbow (non-recurve version - ones used for war would be recurved).

the repeating crossbow were often used for home defense. The repeating crossbow saw its last serious action as late as the China-Japan war of 1894–1895, where photographs show repeating crossbows as common weapons among Qing Dynasty troops. The basic construction of this weapon has remained very much unchanged since its invention, making it one of the longest-lived mechanical weapons.

The repeating crossbow was introduced into Korea by King Sejong (1418–1450), who during a trip to China saw the weapon and was impressed by its mechanism. In Korean it was called *sunogung* (Hangul: 수노궁; Hanja: 手弩弓).<sup>[6]</sup>

A more complex device was described in the works of the Greek engineer Philon of Byzantium. This siege engine, a repeating ballista, was called a Polybolos and was reputedly invented by Dionysius of Alexandria in the 3rd century BC. Two flat-linked chains were connected to a windlass, which by winding back and forth would automatically fire the machine's arrows until its magazine was empty. The machine features the earliest recorded chain drive in the history of technology.<sup>[7]</sup> The Chinese Repeating Crossbow was weaker in draw strength compared to other crossbows, so the arrows were often dipped in poison to cause death from even mild wounds.<sup>[8]</sup>

## Bow String

The bow-string consisted of animal sinew twisted into a cord of suitable strength.

## Power

The small and light arrow of the comparatively weak Chinese crossbow had little penetrative power. For this reason the head of the arrow was sometimes dipped in poison, in order that a slight wound might prove fatal.

## See also

- Cheiromballistra

## References

- ↑ http://en.wikipedia.org/wiki/Philo\_of\_Byzantium
- ↑ Lin, Yun. "History of the Crossbow," in *Chinese Classics & Culture*, 1993, No. 4: p. 33–37.
- ↑ http://www.arco-iris.com/George/chu-ko-nu.htm
- ↑ http://www.atarn.org/chinese/rept\_xbow.htm
- ↑ http://www.atarn.org/chinese/rept\_xbow.htm
- ↑ "쇠뇌 1. 수노궁" (http://book.naver.com/bookdb/book\_detail.php?where=pvidx\_xml&bknu=0410035500&secnum=7&bid=1462421&menu=cvview&query=). *조선의 무기와 갑옷* (in Korean). 2004. p. 98. ISBN 89-8435-207-1.
- ↑ Werner Soedel, Vernard Foley: *Ancient Catapults*, *Scientific American*, Vol. 240, No. 3 (March 1979), pp. 124–125.
- ↑ Pyne-Gallwey, Sir Ralph: "The Crossbow". The Holland Press, Ninth Impression, 1990: p. 337.

## External links

- Crossbow Plans – How to build a repeating crossbow.  
(<http://www.vintageprojects.com/archery/cross-bow-plans.html>)
- CHU-KO-NU – The Chinese Repeating Crossbow (<http://www.arco-iris.com/George/chu-ko-nu.htm>)
- The Chinese Repeating Crossbow (<http://www.rubbertreeplant.co.uk/catapult/chinxbow.php>)  
From Ralph Frankland-Payne-Gallwey's work
- A highlight of the World Traditional Archery Festival in Korea was a demonstration of the Chinese repeating crossbow. ([http://www.iau-crossbow.org/iau/stories/divisions/traditional/wtaf\\_2007.pdf](http://www.iau-crossbow.org/iau/stories/divisions/traditional/wtaf_2007.pdf))

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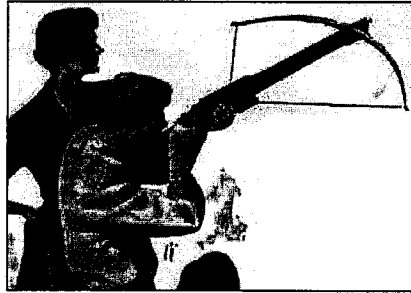
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**Build a Wooden Crossbow Popular Mechanics Plans**



These Popular Mechanics plans are for a wooden crossbow.

This repeating crossbow has all the handling characteristics of a fine repeating rifle of the slide-action type. In the hands of an experienced crossbowman it will deliver five shots in five seconds with near-rifle accuracy over ranges up to 40 yards.

The steel-pointed arrows, or quarrels, as they are correctly called, are loaded from the top into a magazine just as are the cartridges in a bolt-action rifle. After loading, the bow is cocked by a slide, and the quarrel is fired by pressing a trigger which releases the bowstring.

Special thanks to our contributors - we now have the full plans.

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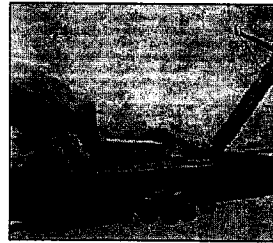
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Discover the expert in you.

# How to Make a Repeating Cross Bow

By Phillip Woolgar, eHow Contributor

A repeating crossbow can shoot multiple arrows with the use of its reloading mechanism. Stringing the bow can be accomplished by using a one-handed movement while your crossbow is stationary. This allows you to accomplish a higher fire rate than a regular crossbow. The reloading mechanism is triggered by moving a lever forward and back. The device is thought to have originated from China between 20 and 220 AD, according to the Associated Publisher.

Difficulty: Moderately Challenging

## Instructions

### Things You'll Need

- Two 2.5-inch nails
- A 4-inch nail
- A one-inch bolt
- Hammer
- Wood glue
- 8 washers
- Router bit
- 3 screws
- A half-inch bolt
- Bowstring wax
- 2 dozen course thread drywall screws
- Jigsaw
- Screwdriver
- Sandpaper
- Drill
- Thick string
- 3-foot bungee cord
- 2-by-4 wood
- 1-by-1.5 wood
- 4 pieces of 1-by-1/4 oak wood

- 1 Shape your 2-by-4 wood with a jigsaw. Cut a curve from the end of the wood to one foot from the other end. Sand the area until it is smooth. You can cut

### EXHIBIT G

the wood to whatever shape you want, as long as you maintain the stability of the wood.

- 2 Cut a 1-by-1 inch hole with your jigsaw into the front sides of your 2-by-4 about two inches from the front of the wood.
- 3 Cut two pieces of the oak to three feet. Cut the other oak pieces to two feet and one foot, respectively. Center them in the hole. Insert the longest piece at the front of the bow, followed by the smaller pieces. Wrap about three feet of string in four evenly spaced spots along the oak to secure the pieces together. Tie a knot at each end.
- 4 Drill a hole at each end of the oak about an inch in. Insert the metal bungee cord hooks through the holes. The bungee cord should be just tight.
- 5 Use the jigsaw to slightly arch the 1-by-1 piece of wood. Your shoulder will rest in this piece. The 1-by-1 piece is about six inches long. Nail the piece into the back of the 2-by-4 at the center.
- 6 Hammer the four-inch nail into the front of the bow, securing the oak.
- 7 Cut the 1-by-1.5 piece of wood to about half of your chosen length of the stock. Carve a slit into the piece wide and deep enough for an arrow to rest in. This will be your trigger mechanism.
- 8 Cut a one 1-by-1 inch groove in the slot. Drill a hole in the middle so that your bolt, which will be your trigger, fits snugly.
- 9 Glue a washer to the underside of where your bolt is. This will ensure the trigger bolt does not wear the wood.
- 10 Slide the trigger mechanism under the bungee cord with the trigger bolt furthest away from the front of the cross bow.
- 11 Cut the 1-by-1.5 piece of wood to form to the same length as your trigger mechanism. You will need two pieces at this length. Cut the same-sized wood to five inches.
- 12 Drill a hole into each of the longer pieces about one inch in and one foot in, for two holes on each piece.
- 13 Screw each of the longer pieces onto the smaller piece. This forms your crank.
- 14 Slide the crank onto the shooting mechanism so that the center holes on the crank line up with the hole on the shooting mechanism. Put two washers

wherever the wood meets or where the wood meets the screws, for a total eight washers. Tighten the crank to the shooting mechanism with a nut.

- 15 Drill a hole about a foot into the 2-by-4, about one inch from the bottom. Repeat Step 14 to insert the bolt.
- 16 Cut a 5-by-2 block of plywood to the same length as your shooting mechanism and the crank. This is your magazine. Cut a slit one inch from of the plywood one inch from the bottom, forming an "L" shape. Drill a hole into the bottom of the "L." Cut a slit in the center of the plywood about two inches in from the back and half an inch from the front. This will hollow out your plywood. The slot needs to equal the width of your arrow with slight wiggle room. Cut a slit from front to back at the bottom of the plywood about six inches to three inches. This needs to fit your bungee cord.
- 17 Mount the magazine to the back of the crank with a washer and screw. You will insert this screw to where you drilled the hole in the magazine and the crank.
- 18 String the front of the magazine to the crank. Use about three feet of string.
- 19 Wax the bungee cord where it will contact the wood.

## Tips & Warnings

- Use only arrows without fins as these are the only ones that will fit in the cross bow.

## Resources

- [Read this Article in Spanish](#)